

EXHIBIT A

In Re:
AMAN RESORTS GROUP LIMITED
Case No. 16-10517-scc

February 23, 2017

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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 16-10517-scc

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In the Matter of:

AMAN RESORTS GROUP LIMITED AND AMAN
RESORTS GROUP LIMITED, BY CARPENTARIA
MANAGEMENT SERVICES LIMITED,

Debtors.

- - - - -x

United States Bankruptcy Court
One Bowling Green
New York, New York

February 23, 2017
3:08 PM

B E F O R E:
HON. SHELLEY C. CHAPMAN
U.S. BANKRUPTCY JUDGE

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2 Doc #71 Motion to Compel Discovery filed by Andrew K. Glenn on
3 behalf of Aman Resorts Group Limited

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7 BY: MATTHEW B. STEIN, ESQ.

8

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10 UNITED STATES DEPARTMENT OF JUSTICE

11 Office of the United States Trustee

12 201 Varick Street

13 Suite 1006

14 New York, NY 10014

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16 BY: ANDREA B. SCHWARTZ, ESQ.

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25 BY: SHARON L. LEVINE, ESQ.

1 P R O C E E D I N G S

2 THE COURT: Good afternoon. Please have a seat.

3 MR. STEIN: Good afternoon, Your Honor.

4 THE COURT: Good afternoon.

5 MR. STEIN: Matthew Stein; Kasowitz, Benson, Torres &
6 Friedman, on behalf of ARGL. There are three motions before
7 you today: ARGL's motion to compel, ARGL's related motion to
8 seal, and Brown Rudnick's cross-motion to afford potentially
9 affected parties the right to be heard on the motion to compel.

10 Two things as a matter of housekeeping. First, with
11 respect to the motion to seal, what I was going to plan on
12 doing today, unless Your Honor had another idea, is keeping my
13 references to those documents that we filed under seal to a
14 minimum.

15 THE COURT: Sure.

16 MR. STEIN: But they're not the crux of what we're
17 going to discuss today.

18 THE COURT: Right.

19 MR. STEIN: Second, I want to make sure that Your
20 Honor is aware of we filed a supplemental declaration this
21 afternoon at noon. I have additional copies, if Your Honor
22 would like them.

23 THE COURT: That's the -- yes, I have that. That
24 attaches the letter that was received from the joint
25 liquidators --

1 MR. STEIN: That's correct.

2 THE COURT: -- from KPMG.

3 MR. STEIN: That's correct.

4 THE COURT: Yes.

5 MR. STEIN: So with that, I'm going to just jump right
6 into the motion. The motion seeks to compel the production of
7 documents that have been withheld by Brown Rudnick on the basis
8 of attorney-client privilege. The withheld documents are set
9 forth in a 267-page privilege log that's attached to my initial
10 declaration as Exhibit Q.

11 ARGL believes that we're entitled to these documents
12 for four main reasons: 1) ARGL was the client, and that it is
13 ARGL's privilege; 2) that PHRL, to the extent that it was Brown
14 Rudnick's client, was acting at all times on behalf of and as a
15 fiduciary for ARGL; 3) the crime-fraud exception to the
16 attorney-client privilege here applies; and 4th) waiver.

17 THE COURT: Let me just jump right in --

18 MR. STEIN: Sure.

19 THE COURT: -- because the filing by KPMG was very
20 significant.

21 MR. STEIN: I agree.

22 THE COURT: And it kind of -- we're rolling down one
23 road, and then we get off to a side road. So I just think it
24 might be useful, in the interests of efficiency, to hear from
25 Ms. Levine if she thinks that that changes anything that we're

1 about to do.

2 MS. LEVINE: Sure. So Your Honor, I'll just enter an
3 appearance for the record.

4 THE COURT: Yeah, of course.

5 MS. LEVINE: Sharon Levine, Saul Ewing, for Brown
6 Rudnick. And with the Court's permission, introducing William
7 Baldiga of the Brown Rudnick firm --

8 THE COURT: Okay, hello, sir.

9 MS. LEVINE: -- who is in court as well.
10 Your Honor, we find ourselves in a little bit of an
11 awkward situation. We never want to be --

12 THE COURT: Well, I'm going to take you out of that
13 awkward situation.

14 MS. LEVINE: The --

15 THE COURT: Go ahead.

16 MS. LEVINE: Because we always want to settle a
17 discovery motion to the extent that we --

18 THE COURT: I understand.

19 MS. LEVINE: -- can.

20 THE COURT: Right.

21 MS. LEVINE: But we're looking for some help from the
22 Court, because clearly there's a dispute here with regard to
23 whether and to what extent we had a client in the first place,
24 and if so, who that client was.

25 THE COURT: Right.

1 MS. LEVINE: And we're still struggling with that.

2 THE COURT: I understand.

3 MS. LEVINE: And so we're looking -- when you find --

4 THE COURT: Right.

5 MS. LEVINE: -- yourself at the bottom of a hole, you
6 want to stop digging. So the concern that we had was our
7 adversary here is making one set of allegations, and we'd be
8 happy to produce the documents, because if they really, truly
9 are the client, then it's their privilege to waive.

10 The letter from the liquidator was exactly what we
11 were afraid of. And there are other people out here who are
12 claiming interest in these documents. And what the liquidator
13 is saying in the letter -- and frankly we were glad that
14 counsel filed it, because we were grappling with that, maybe
15 being a little bit --

16 THE COURT: Um-hum.

17 MS. LEVINE: -- gun shy -- but there's a paragraph in
18 the letter where they didn't want to consent to this
19 jurisdiction of this court.

20 THE COURT: Sure.

21 MS. LEVINE: So we're --

22 THE COURT: Right, but --

23 MS. LEVINE: -- grappling with --

24 THE COURT: I understand. So let me try to simplify
25 this, because I certainly understand that Brown Rudnick, as do

1 hopefully all attorneys, take the attorney-client privilege
2 very seriously. Bedrock principle should, in 99.9 percent of
3 the cases, be not something that can be cast aside.

4 But what you have here is facts on the ground is there
5 was this filing, and then -- excuse me I'm going to sneeze. Or
6 not.

7 And then you have Brown Rudnick on behalf of the
8 debtor consented to the filing, filed an answer, held itself
9 out as counsel to ARGL. There's no dispute about that, right?

10 MS. LEVINE: Correct.

11 THE COURT: And then subsequently sought to withdraw
12 as counsel to ARGL. So that's point number one.

13 Separate question with respect to the documents that
14 came into Brown Rudnick's possession: to the extent that they
15 are documents that were given to Brown Rudnick other than in
16 connection with the filing, that would be one issue. I don't
17 think there's any assertion that that's the case here. The
18 documents that Brown Rudnick received were given to Brown
19 Rudnick in connection with the filing. So in that instance,
20 PHRL -- the person who was acting for PHRL was acting on behalf
21 of AGRL.

22 KPMG says hold on; Brown Rudnick was on notice as of
23 February 2016 that only Carolyn Turnbull could act on behalf of
24 PHRL. Right?

25 MR. STEIN: Your Honor, I think it's that only after

1 February 10th or the order of February 8th, only the joint
2 liquidators could act on --

3 THE COURT: Only the joint liquidators. However, that
4 there's in the prior paragraph that before that time -- before
5 the engagement letter, that was the period of time in which
6 Brown Rudnick had been informed that only Carolyn Turnbull
7 could act on behalf of PHRL.

8 MS. LEVINE: Correct, Your Honor. So just to put a
9 finer point on the --

10 THE COURT: Yeah.

11 MS. LEVINE: -- on the timeline. On March 4th, which
12 was a Friday --

13 THE COURT: Yes.

14 MS. LEVINE: -- there's an involuntary petition that's
15 filed --

16 THE COURT: Right.

17 MS. LEVINE: -- and it's signed by three -- purports
18 to be signed by three entities or three people -- three
19 entities.

20 THE COURT: Right.

21 MS. LEVINE: Omar, Peak Venture Partners, and
22 Carpentaria by Sean Sullivan.

23 THE COURT: Right.

24 MS. LEVINE: So then on Monday, which is the 7th --

25 THE COURT: Right.

1 MS. LEVINE: -- the amended is filed, and it's signed
2 by Carolyn Turnbull, along with a couple of other folks. And
3 then Brown Rudnick files the consent along with the
4 documentation which it understood, at least at the time, would
5 give it authorization to file the involuntary.

6 As soon as that all happened, there was -- Brown
7 Rudnick became aware that either people were saying that there
8 wasn't authorization or they were changing their mind with
9 regard to authorization or there was -- or there was confusion
10 about authorization.

11 As soon as that happened, Brown Rudnick made the
12 decision to withdraw as counsel --

13 THE COURT: Yes.

14 MS. LEVINE: -- and filed a motion even before the
15 motion to dismiss was filed on March 11th.

16 THE COURT: Yes.

17 MS. LEVINE: Literally, as soon as it realized --

18 THE COURT: Understood.

19 MS. LEVINE: -- that there was an issue.

20 THE COURT: Right.

21 MS. LEVINE: So but that said, we still find ourselves
22 in the conundrum of what documents --

23 THE COURT: Right.

24 MS. LEVINE: -- we could produce without further
25 creating issues.

1 THE COURT: Right. But where I started was by
2 suggesting to you and now I'll just kind of get to the punch
3 line is I'm directing production of the documents. I can go
4 through all the different bases for that conclusion.

5 I think the most straightforward one is that based on
6 my review of all the materials that have been submitted, I
7 think the privilege belongs to ARGL and therefore the documents
8 need to be produced. And if you are producing them pursuant to
9 my court order, no one can find fault with you for having
10 inappropriately waived the attorney-client privilege.

11 And what you're telling me is -- directly and
12 indirectly, is that Brown Rudnick proceeded along a path until
13 it became aware that it should not be proceeding along that
14 path, and promptly withdrew, which is exactly what you would
15 expect, in keeping with all the canons. It wasn't a noisy
16 withdrawal, but it was an appropriate -- it appears to have
17 been an appropriate and timely withdrawal.

18 So now, what we have is a situation where we need to
19 understand what happened, because it's no small thing for an
20 involuntary to have been commenced inappropriately. And
21 frankly, it's no small thing, potentially, for attorneys to
22 have been given incorrect information in that regard.

23 So I only know what I know, and I don't know what I
24 don't know. But what I do know is that there's multiple levels
25 of reasons why these documents need to be produced. And based

1 on everything that I've read and you've made arguments in your
2 papers as to why ARGL is not the holder of the privilege, I,
3 with respect, disagree based on the entirety of the record, and
4 I am prepared to enter an order directing the production of
5 documents.

6 MR. STEIN: Thank you, Your Honor.

7 MS. LEVINE: Thank you.

8 THE COURT: All right. And I think also to address
9 separately, because you raised it, the concept that your
10 concern that other potentially affected parties be given an
11 opportunity to appear; they have been given that opportunity.
12 I mean this has been noticed. Anyone who potentially had a
13 concern in that regard could have appeared here today.

14 You're not responsible -- Brown Rudnick is not
15 responsible for protecting a third party's potential interest.
16 And I think that the fact that this hearing was noticed today
17 to the world, anyone who had an interest and who wanted to
18 assert that interest, can and should have appeared here today.
19 And we've received nothing. The only thing that we received
20 from any interested third party was KPMG, which that document
21 itself, I think, reinforced my tentative view that these
22 documents ought to be produced.

23 MS. LEVINE: Thank you.

24 MR. STEIN: Thank you, Your Honor.

25 MS. LEVINE: Your Honor, one second. I just want to

1 ask one question.

2 THE COURT: Yeah, sure.

3 MS. LEVINE: Good. Thank you, Your Honor.

4 THE COURT: All right. Could you -- I didn't mean to
5 steal your thunder, but I'd just as soon that you -- I assumed
6 that you would rather --

7 MS. LEVINE: Be done is good.

8 THE COURT: -- be done.

9 MR. STEIN: It's a more efficient use of your time.

10 THE COURT: More efficient use of everyone's time.

11 I do expect -- and I note that Ms. Schwartz is here
12 from the Office of the United States Trustee -- I mean, I do
13 expect to at some point have a full understanding of who's
14 responsible for what happened here. And I think that there has
15 to be a consequence.

16 That being said, folks aren't -- I don't like to
17 encourage people to throw good money after bad; and I
18 appreciate that your time is expensive. So I don't know what's
19 going to happen next, but I do hope and expect that we'll get
20 to the bottom of it, and if there's a basis for sanctions or
21 other activity, that someone will be bringing that to our
22 attention.

23 MS. LEVINE: Your Honor, just to address that briefly?

24 THE COURT: Sure.

25 MS. LEVINE: As you can imagine, Brown Rudnick will be

1 very happy to put this behind them.

2 THE COURT: I would imagine so.

3 MS. LEVINE: We've had some settlement discussions in
4 that regard. The bid and the ask indicates that we probably
5 have a different view --

6 THE COURT: Um-hum.

7 MS. LEVINE: -- of the case. And one of the things we
8 would ask the Court to consider is potentially mediation.
9 Because in addition to these issues, we have some unused
10 retainer --

11 THE COURT: Um-hum.

12 MS. LEVINE: -- and various people claiming against
13 that as well. So to the extent --

14 THE COURT: Okay, it's a little cryptic. Ms.
15 Schwartz, I'm going to put you on the spot.

16 MS. SCHWARTZ: Okay.

17 THE COURT: The reason that I'm putting you on the
18 spot is because I'm all in favor of parties settling, but to
19 the extent that there are larger issues involved, with respect
20 to the conduct of certain individuals -- I'm not suggesting
21 it's Brown Rudnick -- that's something that at least in the
22 past, the Office of the United States Trustee has been
23 interested in.

24 MS. LEVINE: No --

25 THE COURT: So I don't want to jump at the concept of

1 mediation and on a financial basis this all goes away. Of
2 course that's great. But I don't want to preclude or indicate
3 that I in any way think that the Office of the U.S. Trustee
4 should short circuit its inquiry into the situation.

5 So I'm putting you on the spot, Ms. Schwartz. I
6 apologize.

7 MS. LEVINE: Your Honor, we're not looking to short
8 circuit --

9 THE COURT: No, I know that you're not. Yeah.

10 MS. LEVINE: We just seem to be the only one that
11 keeps showing up. So it's becoming expensive for --

12 THE COURT: I understand.

13 MS. LEVINE: -- Brown Rudnick, which is -- so that's
14 the --

15 THE COURT: I understand.

16 MS. LEVINE: Sorry. Just clearing my throat.

17 THE COURT: Ms. Schwartz, to be frank, I don't know if
18 this is your case or if you're just covering or if you're even
19 familiar with this situation. It was an involuntary that
20 appears to have been improvidently filed and no longer is
21 pending and there's a dispute over who had authority and why it
22 was filed. And it's the -- it was a chapter in an ongoing saga
23 surrounding some of the principals who were involved.

24 Is that an accurate summary?

25 MR. STEIN: Yes.

1 MS. SCHWARTZ: I'm not the lead attorney on this case,
2 Your Honor.

3 THE COURT: Okay.

4 MS. SCHWARTZ: But we all work together in our office.

5 THE COURT: Okay.

6 MS. SCHWARTZ: So I certainly understand what the
7 Court is saying.

8 THE COURT: Okay. All right. Well, do you -- is it a
9 request for me to have someone in this building mediate or --

10 MR. STEIN: Your Honor, at this point I think the
11 first step is to see what's in these --

12 THE COURT: Sure.

13 MR. STEIN: -- 267 pages of documents and see if that
14 moves the needle. Because as you said, there is a disconnect
15 as to what happened, and hopefully these documents can shed
16 light on that. And maybe that would foster --

17 THE COURT: Okay.

18 MR. STEIN: -- foster settlement.

19 THE COURT: I don't want this to become -- this
20 shouldn't take on a life of its own.

21 MR. STEIN: Okay.

22 THE COURT: But I do think we need to get to the
23 bottom of what happened.

24 MR. STEIN: The second issue is even if there is a
25 settlement or resolution between -- with Brown Rudnick, there

1 is still the issue of the petitioners themselves.

2 THE COURT: Right.

3 MR. STEIN: And therefore if this Court is concerned
4 that everything's going to get thrown to a black hole, I don't
5 think that's going to happen.

6 THE COURT: Okay.

7 MR. STEIN: Because there's going to be an airing with
8 respect to at least the petitioners.

9 THE COURT: That's exactly what I'm interested int.
10 So I'm not looking to have you -- either of you -- turn this
11 into a career and an ongoing expensive matter, but I am
12 interested in getting to the bottom of it. So --

13 MR. STEIN: Understood.

14 THE COURT: All right, so send me an order with
15 respect to all the motions. Okay?

16 MR. STEIN: Okay.

17 THE COURT: All right.

18 MR. STEIN: Thank you.

19 THE COURT: Thank you so much.

20 MR. STEIN: Thank you.

21 MS. LEVINE: Thank you, Your Honor.

22 (Whereupon these proceedings were concluded at 3:25 PM)

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documents.

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C E R T I F I C A T I O N

I, Penina Wolicki, certify that the foregoing transcript is a true and accurate record of the proceedings.

Penina Wolicki

Penina Wolicki (CET-569)
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Date: February 24, 2017

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